UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

| | |
|---|---|
| CHRISTINE JOHNSON, Individually and On Behalf of All Others Similarly Situated,<br><br>Plaintiff,<br><br>vs.<br><br>SIEMENS AG,<br><br>Defendant. | Civil Action No. 1:09-cv-05310-JG-RER<br><br><u>CLASS ACTION</u><br><br>AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS |

Lead Plaintiff 1199 SEIU Greater New Pension Fund ("Lead Plaintiff" or "Plaintiff") alleges the following based upon the investigation of Lead Plaintiff's counsel, which included a review of stock analysts' reports and advisories about Siemens AG ("Siemens" or the "Company"), press releases, media reports and other public statements issued by the Company, interviews with former employees of Siemens and consultations with experts. Plaintiff believes that after a reasonable opportunity for discovery, substantial additional evidentiary support will exist for the allegations set forth herein.

## NATURE OF THE ACTION

1. This is a federal securities class action brought on behalf of all purchasers of (i) Siemens' American Depository Receipts ("ADRs") on the New York Stock Exchange ("NYSE"); and (ii) U.S. citizens or residents who purchased Siemens' common shares on the Frankfurt Stock Exchange ("FSE"), between November 8, 2007 and March 17, 2008 (the "Class Period") seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. Defendant Siemens describes itself as a "global powerhouse" in electrical engineering and electronics with more than 400,000 employees worldwide that develop and manufacture products, design and install complex systems and projects. The Company's operations are organized into three strategic business sectors – Industry, Energy and Healthcare. The Industry sector business portfolio includes industry automation and drives, building products and services, lighting, mobility solutions and services and plant business system integration and solutions. The Energy sector business portfolio includes a spectrum of products, services and solutions associated with the generation, transmission and distribution of power and the extraction, conversion and transport of oil and gas. Finally, the Healthcare sector is engaged in the development, manufacture and marketing of diagnostic and therapeutic systems, devices and consumables, as well as healthcare related information technology systems.

3. This case concerns certain of Siemens' large construction projects, which are performed under long-term contracts that are awarded on a competitive bidding basis (referred to herein as the "Legacy Projects"). These multi-year, fixed priced contracts subjected Siemens to significant risks, including financial, performance, reputational and customer-specific and/or country-related risks. Throughout the Class Period, Siemens improperly accounted for the Legacy Projects, thereby overstating its financial performance, and failed to disclose that the Legacy Projects were beset by a host of severe problems – inadequate engineer staffing, cost overruns and supply cost issues.

4. Prior to and during the Class Period, Siemens was struggling with a massive bribery scandal (the "Siemens Bribery Scandal"). The Company was under investigation by the United States Securities and Exchange Commission ("SEC") and the United States Department of Justice ("DOJ") for violations of the United States Foreign Corrupt Practices Act of 1977 ("FCPA"), which prohibits corporate bribes to secure business. News stories were regularly reporting that Siemens had a culture of obtaining business through corporate bribery and that this practice went to the highest executive levels of the Company. In addition, foreign regulatory agencies were investigating Siemens for corporate bribery. In early 2007, Siemens initiated a wide-ranging internal investigation into its corporate bribery practices. As this investigation progressed, many of Siemens long-standing executives and directors left their positions at the Company. In the summer of 2007, Defendant Löscher assumed the position of Chief Executive Officer ("CEO"). The mission for Löscher was clear: finish the clean up of the Siemens Bribery Scandal, restore managements' reputation and credibility and improve Siemens' business.

5. Against this backdrop, on November 8, 2007, Defendant Peter Löscher ("Löscher") told investors, among other things, that, for fiscal 2008, Siemens would experience "volume growth

that is twice as high as the rate of global GDP growth, and that our operating profit will grow twice as fast as our volume." Defendant Löscher had no reasonable basis to make this statement given what he knew or recklessly disregarded about the problems with the Legacy Projects. Indeed, Defendant Löscher knew that the Company lacked a complete and full understanding of the extent of the problems at the Legacy Projects such that he did not have sufficient and reliable financial information necessary to make statements about the Company's earnings and prospects. In fact, Defendant Löscher knew that he had dispatched teams of Siemens' auditors to conduct a "review and audit" of dozens of the Company Legacy Projects in order to better understand reasons for extensive project delays and massive cost overruns at such projects and that this review and audit would likely result in a massive charge to Siemens' reported earnings.

6. Irrespective of Defendants' knowledge of the very real and significant problems with the Legacy Projects, in mid-January 2008, Defendant Löscher again stated, among other things, that "We confirm our outlook for the full fiscal year: growing revenues at least twice as fast as global GDP and growing Group Profit from Operations at least twice as fast our revenues" and "There is no profit warning. Our statements are known: They include sales are growing double the pace of the global economy, profits double the pace of sales." Defendant Löscher lacked a reasonable basis for these statements as he knew when he made these statements that the problems with the Legacy Projects were far worse than had been disclosed and that the Company would likely take massive charges to account for the problems.

7. A short six weeks later, on March 17, 2008, Siemens announced that increased costs associated with Legacy Projects would reduce its earnings during the quarter ended March 31, 2008 by about €900 million and that it would likely take additional charges on such projects during fiscal 2008. Analysts who closely follow Siemens were stunned by the Company's revelations and

publicly chided Defendants about their failure to disclose Siemens' operational and financial problems earlier. In response to Siemens' announcements, the price of Siemens' ADRs plummeted by more than 15%, from $124.54 to $105.10 per ADR.

8. On December 15, 2008, Siemens settled the bribery investigations with the SEC and the DOJ, paid a total of $800 million in fines and penalties and plead guilty to a criminal violation of the FCPA. The Company admitted to having engaged in a pervasive pattern and practice of corporate bribery that spanned many years and included more than tens of millions of dollars of bribes to secure business. Siemens now bears the distinction of having paid the largest fines/penalties for violations of the FCPA since the passage of that act.

**JURISDICTION AND VENUE**

9. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

10. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §240.10b-5].

11. Venue is properly laid in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. §1391(b) and (c).

12. This Court has subject matter jurisdiction of this action pursuant to Section 27 of the Exchange Act [15 U.S.C. §78aa] and 28 U.S.C. §1331. The Court may properly exercise subject matter jurisdiction over this case because the wrongful conduct alleged herein had a substantial adverse effect on U.S. investors.

13. Siemens' American Depository Shares ("ADSs") are traded on the NYSE in the form of ADRs, with one ADR corresponding to one Siemens' ADS, and are widely-held in the U.S.

Siemens' ADSs were issued pursuant to a Deposit Agreement negotiated and executed in New York. The Deposit Agreement has three parties: Siemens, Morgan Guaranty Trust Company of New York (now JP Morgan Chase Bank, N.A.) and all holders from time to time of the ADRs. The Deposit Agreement expressly states that "[t]his Agreement and the ADRs shall be governed by and construed in accordance with the laws of the State of New York."

14. According to *Thompson Financial*, during the Class Period, U.S. institutional investors owned approximately two-thirds of the Company's ADRs. The latest available information from *Thompson Financial* also indicates that, excluding Germany, the number of U.S. institutional investors, many of which are located in this District, and their respective holdings of Siemens common shares exceeded that of the holders in any other country. Indeed, such information indicates that U.S. institutional investors own a larger percentage of outstanding Siemens' common shares than ***all*** of the institutional investors domiciled outside of Germany ***combined***.

15. U.S. investors own a substantial portion of Siemens' outstanding stock. Indeed, Siemens' Form 20-F for the year ended September 30, 2008, states:

> Based on our share register, we had 632,741 shareholders of record as of September 30, 2008, and ***U.S. record holders held approximately 18.21 percent of our ordinary shares at that date***. In addition, the records of the depositary under our ADR Program, JPMorgan, show that there were 385 registered holders of our American Depositary Shares (ADSs) at that date.[1]

16. Siemens also has substantial business operations in the U.S. The Company owns more than 60 subsidiaries that are domiciled in the United States with more than 16% of Siemens' employees employed in the U.S. and nearly 20% of its fiscal 2008 revenues being derived from its U.S. operations. In fact, Siemens' Annual Report for the year ended September 30, 2008, states:

---

[1] All emphasis added, unless otherwise noted.

> International focus and worldwide commitment have always been a hallmark of our company. At home in some 190 countries, we generate more than 80 percent of our revenue from sales outside Germany. Contributing revenue of over €14.8 billion, ***the U.S. is our largest single market***.

**PARTIES**

17. By Order of the Court dated February 17, 2010, 1199 SEIU Greater New York Pension Fund was appointed Lead Plaintiff in this action. Lead Plaintiff purchased Siemens ADRs during the Class Period, as set forth in its certification previously filed in this case and incorporated herein by reference, and was damaged thereby.

18. Defendant Siemens, an electronics and electrical engineering company, operates in the industry, energy, and healthcare sectors worldwide. The Company, which was founded in 1847, maintains its principal executive offices in Munich, Germany with its U.S. corporate headquarters located at Citicorp Center in New York, NY. Siemens' shares are traded in euro on the FSE and its ADSs are traded on the NYSE in the form of ADRs under the symbol "SI."

19. Defendant Löscher was, at all relevant times, President and CEO of the Company. During the Class Period, Defendant Löscher served as a member of Siemens' Managing Board, the Company's top management body whose members are jointly accountable for the entire management of the Company and is responsible for preparing the Company's quarterly and half-yearly reports, the Consolidated Financial Statements of Siemens, and overseeing the Company's internal policies and compliance with all applicable provisions of law and official regulation. Defendant Löscher signed Siemens' fiscal 2008 Form 20-F, which was filed with the SEC during the Class Period.

20. Defendant Joe Kaeser ("Kaeser") was, at all relevant times, Siemens Chief Financial Officer, Executive Vice President and a member of Siemens Managing Board. Defendant Kaeser signed Siemens' fiscal 2008 Form 20-F, which was filed with the SEC during the Class Period.

21. Defendants Löscher and Kaeser are collectively referred to herein as the "Individual Defendants," and Siemens and the Individual Defendants are collectively referred to herein as "Defendants."

## CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of (the "Class") all purchasers of (i) Siemens' ADRs on the NYSE; and (ii) U.S. citizens or residents who purchased Siemens' common shares on the FSE (collectively referred to hereinafter as "Siemens' securities"), between November 8, 2007 and March 17, 2008 (the "Class Period"). Excluded from the Class are Defendants, members of the immediate family of each of the Defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

23. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. As of September 2008, Siemens had more than 914 million shares of common stock outstanding, owned by thousands of persons.

24. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class, which predominate over questions which may affect individual Class members, include:

(a) Whether Defendants' statements were materially false and misleading when issued and/or omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(b) Whether Defendants knew or deliberately disregarded that their statements were materially false and misleading;

(c) Whether the price of Siemens' securities were artificially inflated; and

(d) The extent of damage sustained by Class members and the appropriate measure of damages.

25. Plaintiff's claims are typical of those of the Class because Plaintiff and the Class sustained damages from Defendants' wrongful conduct.

26. Plaintiff will adequately protect the interests of the Class and has retained counsel that is experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

27. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

**CONFIDENTIAL SOURCES**

28. Plaintiff makes the allegations herein, except as to allegations specifically pertaining to Plaintiff and its counsel, based upon the investigation undertaken by Lead Plaintiff's counsel, which investigation included analysis of publicly available news articles and reports, public filings, securities analysts' reports and advisories about Siemens, interviews of former employees of Siemens, press releases and other public statements issued by the Company, and media reports about the Company and believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

29. Moreover, the allegations made herein are supported by the first-hand knowledge of four (4) confidential witnesses ("CWs"). These informants are former employees of Siemens who provided facts from various departments of the Company. As detailed below, the CWs each served

in positions at Siemens, which provided them with access to the information they are alleged to possess.

30. Confidential Witness 1 ("CW1") is a former planning/scheduling engineer for Siemens Power Generation division. CW1 was employed by Siemens from 2001 to 2005 and served as a consultant for the Company through 2006. CW1 was primarily responsible for managing the overall cost and contract administration on various turnkey power plant projects.

31. Confidential Witness 2 ("CW2") is a former electrical commissioning engineer and power train fact finder for Siemens Power Generation Division. CW2 was employed by Siemens from 2000 through 2009. During this time frame, CW2 had many responsibilities which included, among others, performing inspections of power plants during planned outages.

32. Confidential Witness 3 ("CW3") is a former employee who worked at Siemens in various capacities. CW3 was employed at Siemens at various times from September 2001 to May 2009. During that time, CW3 served as a Cost Engineer, a Logistics Engineer and a Senior Project Controls Manager. In these roles, CW3 gained a detailed understanding into Siemens' project management.

33. Confidential Witness 4 ("CW4") is a former Support Manager in Siemens Power Generation Division. CW4 was employed at Siemens from approximately 1990 through 2009. CW4 was primarily responsible for hiring personnel and project managers for turnkey power plant projects.

## SUBSTANTIVE ALLEGATIONS

### The Company and Its Business

34. Defendant Siemens, whose business portfolio is based on electronics and electrical engineering, operates in approximately 190 countries worldwide. Effective January 1, 2008, the

Company reorganized its operations into three strategic business sectors, Industry, Energy and Healthcare. Siemens' fiscal year ends on September 30.

35. The Industry sector business portfolio includes industry automation and drives, building products and services, lighting, mobility solutions and services and plant business system integration and solutions. The Industry sector is principally composed of the business activities that Siemens previously classified among the following business groups prior to January 1, 2008: Groups Automation and Drives ("A&D"); Industrial Solutions and Services ("I&S"); Transportation Systems ("TS"); Siemens Building Technologies ("SBT"); and OSRAM.

36. The Energy sector business portfolio includes a spectrum of products, services and solutions associated with the generation, transmission and distribution of power and the extraction, conversion and transport of oil and gas. The Energy sector is essentially composed of business activities that Siemens previously classified among the following business groups prior to January 1, 2008: Power Generation ("PG"), Power Transmission and Distribution ("PTD"), and the oil and gas activities of the former Industrial Solutions and Services ("I&S") segment.

37. The Healthcare sector is engaged in the development, manufacture and marketing of diagnostic and therapeutic systems, devices and consumables, as well as healthcare related information technology systems. The Healthcare sector is composed of business activities that Siemens previously classified as the Medical Solutions ("Med") business group prior to January 1, 2008.

38. In 2005, Siemens announced its Fit4More initiative, which was a plan to improve the profitability and corporate responsibility at the Company. According to Siemens' Annual Report for 2005 (the "2005 Annual Report"), the Fit4More initiative was intended to meet the following

objectives: (i) performance and portfolio; (ii) operational excellence; (iii) people excellence; and corporate responsibility. The 2005 Annual Report, stated, in pertinent part, as follows:

> All Groups are following our action plan, which we call Fit4More, with a target completion date of April 2007. It embraces four main pillars:
>
> **Performance and Portfolio**: We are committed to achieving profitable growth by growing our sales at least twice as fast as global GDP and ensuring that every one of our Groups achieves its margin targets. Strengthening our portfolio is an ongoing process that includes continuous adaptations and acquisitions.
>
> **Operational Excellence**: We are committed to executing the top+ Siemens Management System with its sharp focus on innovation, customer focus and global competitiveness, including finding the most strategic fit in today's ever-changing global value chain.
>
> **People Excellence**: We are working to create a uniform high-performance culture Company-wide - one that motivates our people to excel at everything they do. After meeting with countless employees worldwide, I know our employees are excited about our people excellence programs. We are also increasing our global talent pool, establishing career tracks for specialists and offering a new curriculum for our Siemens Leadership Program.
>
> **Corporate Responsibility**: We are committed to being an active and responsible member of every community where we do business worldwide and we've set the goal of becoming best-in-class in corporate governance, business practices, sustainability and corporate citizenship.

39. In 2007, the Fit4More initiative morphed into the Fit42010 program, as discussed herein.

**The Legacy Projects Are Plagued by**
**Construction Delays, Cost Overruns and Supply Cost Issues**

40. Unbeknownst to investors, prior to and during the Class Period, many of the Legacy Projects were experiencing extensive construction delays, cost overruns and supply cost issues. In response to these problems, Defendants initiated a review and audit of dozens of Legacy Projects around the globe in order to assess the scope and magnitude of the problems with the projects. Following this audit, Siemens would be forced to take substantial charges against its earnings for the massive cost overruns associated with the projects.

41. Many of the Legacy Projects were experiencing extensive construction delays due to inadequate staffing at the projects. Siemens had staffed many of its projects with engineers who lacked the training necessary to manage the projects. Adding to and exacerbating this problem was the fact that the Company had lost many qualified engineers because it had lowered compensation rates in the PG division. Additionally, Siemens placed key budgeting and planning matters directly in the hands of field level engineers, as opposed to having centralized decision-making processes in place.

42. According to CW2, a long-time former Siemens' PG engineer, the PG division had long standing difficulties with numerous power plant projects being significantly behind schedule. CW2 explained that since, at least, 2000, Siemens' PG "had a terrible time" getting accurate and complete power plant designs, drawing and project documentation. CW2 attributed these deficiencies to inexperienced engineers in key power plant design roles. CW2 explained that after Siemens PG design engineers received client specifications for a power plant, they create highly detailed power plant designs and drawings that field engineers use as a basis for building the plant. CW2 stated that invariably, the drawings received by field engineers were very incomplete and inaccurate, which CW2 attributed to several factors.

43. CW2 indicated that Siemens' design engineers were very inexperienced and were subject to intense time pressures to deliver drawings to the field so that project construction could be initiated as soon as possible. In addition, Siemens often outsourced a particular design element to other companies. In these situations, Siemens was responsible for satisfying a thorough quality assurance process to ensure the outsourced plan designs conformed to the customer's specifications and the overall design of the plant. CW2 indicated that oftentimes, the quality assurance process was not executed.

44. CW2 explained that, as a result of the above factors, Siemens routinely issued incomplete and inaccurate engineering plans and drawings to the field engineers so that project construction would be initiated, hoping to "play catch up" and correct the deficiencies once construction was already well underway.

45. CW2 also explained that, if and when field engineers received incomplete or inaccurate designs, they processed so-called Field Action Reviews ("FARs"), which identified and documented the issues being reported on. CW2 said that the myriad of problems and delays that Siemens experienced on power plant projects were definitely known by the Company's management because field engineers prepared reports on the status of their projects daily.

46. In fact, CW2 said that Siemens typically keeps its customers informed about a project's status, although explanations for project delays were typically generalized. In addition, CW2 stated that throughout his/her association with Siemens, the Company's customers monitored the progress of projects closely and that they sought compensation from Siemens when it missed scheduled project milestone dates. As a result, the Company's customers routinely communicated with Siemens regarding the numerous missed project milestone dates.

47. Similarly, according to CW4, a long-time Siemens' PG senior manager, power plant projects, especially those outside the U.S., suffered from "a relative lack of experience" among the field engineers assigned to projects. CW4 noted that several factors contributed to this lack of experience. First, during the time that Siemens was intent on procuring a "a big order book," it reduced the compensation rates of personnel in the PG division, which caused a large number of its most experienced PG personnel engineers to leave the Company. CW4 explained that these departures were particularly problematic from a project execution standpoint since the philosophy of the division's management was to delegate all substantive project-related decisions regarding "the

control of budgets and scheduling" to field level engineers, rather than centralizing functions within division headquarters.

48. In addition, the plant construction process of most projects necessitated the involvement of a large number of contracting entities, that were responsible for a myriad of technical functions. CW4 indicated that managing the scheduling, coordination and execution of these various contractors overwhelmed the inexperienced field engineers that Siemens employed to replace the more sophisticated personnel that had left the Company.

49. CW4 also noted that the charge that Siemens announced at the end of the Class Period included cost overruns on projects from around the globe, including projects in Germany, Finland, Pakistan, Australia, Argentina, and the U.S. According to CW4, U.S. projects (located in Lakeside, Utah and Longview, West Virginia) were adversely affected by a shortage of skilled labor, particularly welders, and by increases in project material costs.

50. The extensive construction delays contributed to another substantial problem for Siemens – supply cost issues. As the delays continued, the supply contracts that the Company had entered into at the start of the project lapsed. This forced Siemens to have to negotiate new supply contracts at present day prices, which caused raw material costs to rise. As a result, the Company was being forced to purchase supplies at higher prices, which increased costs at many of the Legacy Projects.

51. CW4, a long-time Siemens PG senior manager, explained that prior to the beginning of the Class Period, the Company routinely accepted contracts with significant financial risk and little financial reward and had begun a process of shifting its corporate focus away from maintaining a large order backlog to one that was geared toward ensuring the orders it accepted would be more

profitable. Simultaneous with this policy shift, the Company undertook a rigorous project-related "portfolio analysis" within all of its divisions.

52. CW4 stated that he/she attended quarterly meetings in Erlangen, Germany, where approximately 100 PG division managers from around the world convened to conduct a comprehensive review of the division's financial and operational performance. CW4 noted that, in approximately the winter of 2007, Siemens senior management understood, *i.e.;* "the light went on," that a multitude of the division's projects were experiencing time delays and cost overruns. CW4 said that this realization was the genesis of an exhaustive review of the power plant projects that occurred prior to and during the Class Period.

53. In addition, CW4 noted that senior management in the PG division indicated that they "wanted to take a big charge and not dribble out bad news." CW4 explained that the rationale was that taking a single, very large charge would allow the PG division to "report only good news" on a going forward basis, which management believed was critical to reestablishing its credibility in the marketplace.

**The Siemens Bribery Scandal**

54. In an attempt to quell market anxiety about such activity, in 2007 Siemens engaged Debevoise & Plimpton LLP ("Debevoise"), an independent external law firm, to conduct an independent and comprehensive investigation to determine whether anti-corruption regulations had been violated and to conduct an independent and comprehensive assessment of the Company's compliance and control systems. Siemens disclosed that Debevoise reported its findings directly and exclusively to the Compliance Committee of the Supervisory Board (formerly the Audit Committee), and was assisted by forensic accountants from the international accounting firm of Deloitte & Touche.

55. Engaging in these activities has, by Siemens own admission, caused "grave harm" to itself and its shareholders and placed the Company's very survival in jeopardy. Indeed, the Company tarnished its 160-year heritage by systemically engaging in criminal activities in the United States, Europe, Asia, Africa, the Middle East, South America and other locations in which the Company conducts business.

56. This culture of corruption caused potential customers to shy away from doing business with Siemens and led to high employee turnover within its ranks, including its most senior executive manager.

57. In December 2008, Siemens plead guilty in the United States to violating the Exchange Act and the FCPA by systemically and extensively engaging in illegal activities, including the establishment of sham businesses, phony contracts, phantom invoices, shadow companies, mail and wire fraud, bribery, and money laundering, in order to obtain contracts or retain business for the Company. The Company knowingly used bagmen, elaborate payment schemes and secret off-book accounts to conceal bribery payments; mischaracterized bribes and kickbacks in corporate accounting records; circumvented and failed to maintain adequate internal controls; and failed to comply with the books and records provisions of the FCPA. Its most senior echelons of management, including its President and CEO, and his successor, and its Chief Financial Officer, and its compliance, legal, internal audit, and corporate finance departments each played a significant role in the illegal activity.

**Materially False and Misleading**
**Statements Made During the Class Period**

58. The Class Period begins on November 8, 2007, when Siemens announced its fiscal 2007 financial results. On that date, Siemens issued a press release that called for higher operating unit profit margins, higher than expected Fit42010 program goals, and a more transparent corporate

enterprise. For the year, Siemens reported net income of € 4.0 billion. The press release stated, in pertinent part, as follows:

> ***Siemens is raising the target margin ranges for its operating units***. "We're convinced that the creation of new structures within the three planned Sectors energy, Industry and Healthcare will make our company less complex, more transparent, more focused and, therefore, faster and more successful. ***As a result, it's also clear we'll exceed the current goals of our Fit for 2010 program***," said Peter Löscher, Siemens CEO. The new target margin ranges for the future Energy and Industry Sectors will be announced at the end of January 2008. ***Effective immediately, the target margin range for the Medical Solutions Group (Med) will be raised to 14-17% from the current 13-15%. In the course of the restructuring, Siemens also intends to reduce selling, general and administrative costs, as a percentage of sales, 10-20% by 2010***.

59. Commenting on Siemens' global operations for the fiscal year ended September 30, 2007, Defendant Löscher remarked:

> The fourth quarter demonstrates the kind of quality growth Siemens can generate. We expanded our business in all regions of the world, and all our operating Groups reached their Fit 4 2010 target margin ranges. This success in turn produced a strong increase in free cash flow. Net income was significantly impacted by tax expense related to the carve-out of Siemens VDO Automotive.
>
> * * *
>
> Operationally, we expect more quality growth in fiscal 2008. ***Specifically, we anticipate volume growth that is twice as high as the rate of global GDP growth, and that our operating profit will grow at least twice as fast as our volume***. Siemens remains very well positioned in dynamic world markets for solutions in industry, energy, and healthcare."

60. Also on November 8, 2007, the *Dow Jones & Company, Inc* reported, in part:

> Industrial conglomerate Siemens AG (SI) Thursday said it swung to a net loss in the fourth quarter, as earnings were impacted by a EUR1 billion tax expense related to the sale of its VDO auto electronics unit, but its group profit more than doubled.
>
> Munich-based Siemens posted a net loss attributable to shareholders of EUR155 million after a net profit of EUR90 million in the same period a year ago. Group profit more than doubled to EUR1.99 billion from EUR749 million, exceeding analysts' estimates of EUR1.7 billion, while sales were up 9% at EUR20.2 billion from EUR18.5 billion.
>
> New orders rose 21% on the year in the fourth quarter to EUR21.3 billion from EUR17.6 billion.

"***We anticipate volume growth (in 2008) that is twice as high as the rate of global (gross domestic product) growth, and that our operating profit will grow at least twice as fast as our volume***," Siemens' new chief executive, Peter Löscher, said in a statement.

61. In response to Defendants' positive statements, the price of Siemens' ADRs rose by more than 12% on November 8, 2007 to close at $155.16.

62. Following the release of Siemens' financial results for the year ended September 30, 2007, analysts issued reports that highlighted Defendants' positive statements and recommended the purchase of Siemens stock. For example:

<u>ING</u>

Siemens posted a very strong 4QFY07, well above expectations. ***More than results, Siemens made very positive announcements: 1) a great effort of financial transparency 2) the raising of the FY10 financial targets in 1QFY08 (already done for Medical)*** and 3) a share buyback programme. We raise our TP from €112 to €120.36.

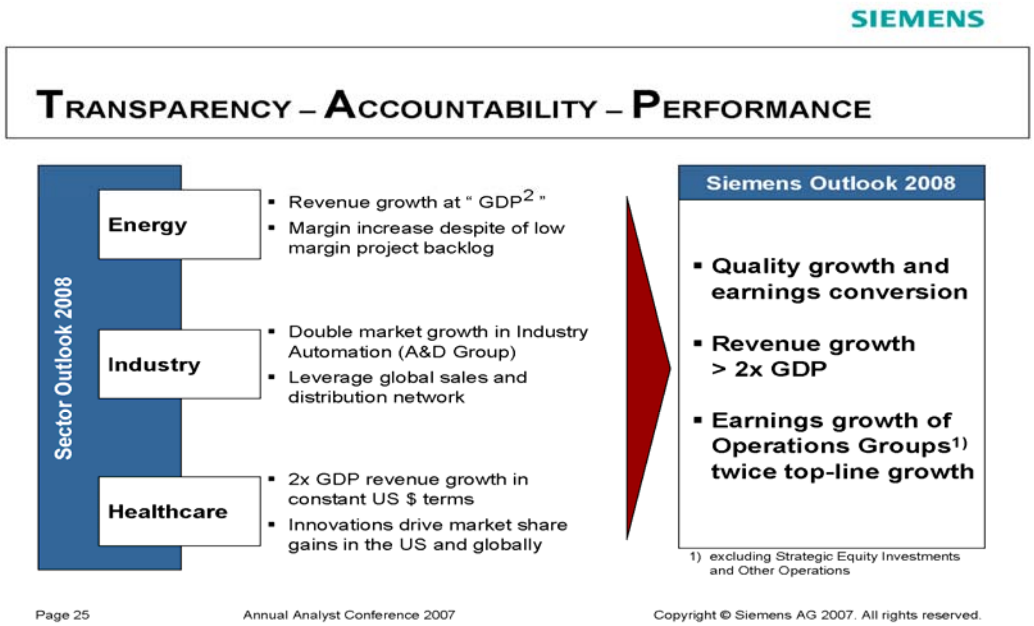
<u>UniCredit</u>:

In the press conference, the CEO formulated a positive outlook for 2008. ***He appeared to be confident that the planned restructuring success will be seen in all units and that all groups are on track to meet their financial targets in FY 08***. We concur with this statement and assume that the sales growth rates will remain in the high single-digit percentage region in 2008 (at least 2x global GDP and earnings 2x sales growth). This is more or less in line with our overall assumptions of FY 08 adjusted sales growth of 8% y-o-y).

<u>Societe Generale</u>:

Siemens reported strong Q4 operating figures, well above consensus. . . . ***The outlook looks strong***. Siemens anticipates volume growth at twice global GDP growth in 2008 and ***operating profit to grow twice as fast as volumes.***

63. On November 9, 2007, Defendants issued slides for a conference call with securities analysts in London, reiterating the Company's 2008 increased profit margins and earnings growth. The slides stated, in pertinent part, as follows:




64. The statements referenced above in ¶¶58-59 and 63 were materially false and misleading when made because they misrepresented and failed to disclose the following adverse facts, which were known to Defendants or recklessly disregarded by them:

(a) that Siemens was experiencing more than a ***billion*** dollars in cost overruns on a large number of Legacy Projects;

(b) that Defendants commissioned "quite a large amount of people" to conduct extensive "review and audit" on dozens of Legacy Projects that were experiencing significant delays and materially adverse supplier management and project management planning, execution and cost control issues;

(c) that as a result of extensive systemic delays and project management execution failures on a large number of the Legacy Projects, Defendants commissioned "a technology engineering team" to understand whether technology related matters were giving rise to such delays and/or failures;

(d) that many of the Legacy Projects had severe supply cost issues, as extensive construction delays caused supply contracts to lapse and the Company was forced to negotiate new supply contracts at increased raw material costs that Siemens could not pass along to its customers;

(e) that the Company's financial results were materially overstated, as the Company had improperly accounted for its Legacy Projects. As a result, Siemens' financial statements were not prepared in accordance with International Financial Reporting Standards ("IFRS") and were, therefore, materially false and misleading, as set forth herein; and

(f) that based on the foregoing, Defendants lacked a reasonable basis for their positive statements about the Company, its prospects and growth.

65. On November 16, 2007, *The Wall Street Journal*, reported, in part:

> More Details on Siemens Bribes
>
> Scandal-scarred Siemens AG paid millions of euros in bribes to cabinet ministers and dozens of other officials in Nigeria, Russia and Libya as it sought to win lucrative contracts for telecommunications equipment, according to a court ruling that depicts a pattern of bribery by one manager.
>
> The document, viewed by *The Wall Street Journal*, offers the most detailed picture to date of the scandal that has ensnared one of the world's biggest conglomerates in investigations across the globe.
>
> The Oct. 4 ruling by a Munich court names four former Nigerian telecommunications ministers as well as other officials in Nigeria, Libya and Russia as recipients of 77 bribes totaling about 12 million euros, or about $17.5 million. Siemens accepted responsibility for the misconduct and agreed to pay a 201 million euro fine decreed by the court, but it has declined to identify those named as bribe givers and takers in the ruling's text, which wasn't disclosed.

66. On or about November 28, 2007, Siemens filed its Form 20-F for the year ended September 30, 2007 with the SEC (the "2007 Form 20-F") which was signed by the Individual Defendants. The 2007 Form 20-F contained financial statements for the year ended September 30, 2007 which were represented to have been prepared in accordance with IFRS.

67. The statements referenced above in ¶66 were materially false and misleading when made for the reasons stated at ¶64.

68. On January 13, 2008, the *Frankfurter Allgemeine Sonntagszeitung* reported that it had interviewed Defendant Löscher and that he had stated Siemens did not reduce its 2008 earnings outlook. "***There is no profit warning. Our statements are known: They include sales are growing double the pace of the global economy, profits double the pace of sales***," he said. Defendant Löscher also stated that he does not have ***"any knowledge of our business significantly changing*** because of a global slowdown." In our order backlog, we're not yet feeling anything of slackness.***"***

69. The statements referenced above in ¶68 were materially false and misleading when made for the reasons stated at ¶64.

70. As reported by *Reuters* on January 13, 2008, Defendant Löscher continuously reassured investors about Siemens financial prospects:

> Siemens Chief Executive Peter Löscher dismissed shareholder calls for new supervisory board members to signal a fresh start as the company struggles to emerge from a corruption scandal.
>
> Löscher told German weekly *Frankfurter Allgemeine Sonntagszeitung* in an interview published on Sunday he could not support those demands because it was the supervisory board that ensured the realignment of the company.
>
> He also dismissed market talk Siemens would cut its targets for the year saying: "***There is no profit warning. The company is in great shape. Our business is booming***."
>
> Austrian-born Löscher took over Siemens in May and has regrouped the company's 10 units into industry, energy and healthcare divisions to align with global growth trends. ***Löscher said it was thanks to Siemens chairman Gerhard Cromme and supervisory board member Josef Ackermann that he was able to reshape Siemens***.
>
> Prosecutors and Siemens itself are investigating whether hundreds of millions of euros that disappeared from Siemens' accounts were used as bribes to win contracts. The scandal surrounding the investigations forced the resignation of both Siemens' chairman and its CEO last year.

> The investigations cost Siemens up to 1.4 billion euros in its fiscal year just ended, and the company has so far dismissed about 140 employees for compliance violations. The trains-to-light bulbs conglomerate is due to publish first quarter results on Jan. 24, the day of its annual meeting, where shareholders are expected to vent their anger over misconduct at the company.
>
> Löscher said he was looking forward to a lively discussion at the shareholder meeting. He also said Siemens was not feeling any effects from the subprime crisis in the United States, adding: ***"The credit market crisis in the United States is hitting consumption first. Our core business is long-term infrastructure projects. If at all, an effect would become noticeable in that area with some delay.***"
>
> ***Löscher*** also said he was not worried about the rise of oil prices because it could have a "stimulating effect" on Siemens as it triggered demand for energy efficiency, an important business for the company. "Renewable energy will be one of the main drivers of our growth," Löscher said. ***"Another positive effect of the high oil price for us, for example, is additional buying power in the Arabic countries. And if they invest in anything, then it will be largely infrastructure projects***," Löscher continued.
>
> Löscher, the first outsider to head Siemens, plans to focus on growth in the Middle East and aims to take on projects in Russia and China. "Apart from India and China, the Near and Middle East will be my personal main focus in 2008. Furthermore I will travel to Russia more often." Loescher said he hoped Siemens wins orders for infrastructure projects in Russia, which will host the 2014 Winter Olympics, and China, which will host the global trade fair in Shanghai in 2010.

71. The statements referenced above in ¶70 were materially false and misleading when made for the reasons stated at ¶64.

72. On January 24, 2008, Siemens issued a press release announcing its earnings for its fiscal 2008 first quarter, the quarter ended December 31, 2007, which stated, in pertinent part:

> Income from continuing operations rose sharply year-over-year. Income from continuing operations was €1.078 billion, 74% higher compared to €621 million in the first quarter a year earlier. The two primary factors in this increase were higher Group profit from Operations and lower central costs related to legal and regulatory matters. In particular, the prior-year period included a non-tax-deductible penalty of €423 million related to an earlier EU antitrust investigation involving major manufacturers of gas-isolated switchgear. Siemens' Financing and Real Estate activities contributed €216 million in income before income tax in the first quarter, up from €152 million a year ago. Earnings per share (EPS) from continuing operations in the first quarter rose to €1.14 from €0.65 in the prior-year period.

> ***Group profit from Operations climbed on rising revenue and improved profitability. The majority of Groups in Operations increased both Group profit and Group profit margin compared to the first quarter a year ago, taking Group profit from Operations up 16% year-over-year, to €1.719 billion***. As a general trend, the increase was due to operating leverage combined with rising revenue. Leaders in this regard were Automation and Drives (A&D), Industrial Solutions and Services (I&S) and Power Transmission and Distribution (PTD), which achieved high double-digit growth in Group profit compared to the first quarter a year earlier. ***Group profit declined at Power Generation (PG) and Transportation Systems (TS), as both Groups took higher charges [ €200 million] at major projects compared to the prior-year period***. Group profit from Operations in the current period includes a €70 million impairment within Other Operations, related to a regional business that is held for disposal.

Defendant Löscher commented on the results, stating in pertinent part as follows:

> Siemens' strong fundamental growth opportunities remain in place, as shown by our organic revenue growth of 8% and a book-to-bill ratio above 1.3 in the first quarter. ***We confirm our outlook for the full fiscal year: growing revenues at least twice as fast as global GDP and growing Group Profit from Operations at least twice as fast our revenues.***
>
> We are moving forward on executing our strategic agenda. With today's announcement of ambitious margin targets for our Industry and Energy sectors, and for all our divisions, we continue to raise performance goals with increased accountability.

73. That same day, January 24, 2008, Siemens held its 2008 first quarter earnings conference call with securities analysts. During the conference call, Defendant Löscher made, in part, the following statements about Siemens' operational and financial performance:

> ***I've been saying all along that Siemens' broad and well positioned business portfolio is a key strength and our first quarter results show this. We're off to a good start to the year. Siemens growth opportunities remain strong***. We achieved strong organic growth and a book to bill ratio of well above 1 for all sectors and a book to bill for the Group overall of 1.32, which is higher in comparison to last year's of 1.2. Revenue climbed 10%, orders increased 9%. On an organic basis, revenues and orders rose 8% year-on-year. ***Group profit from operations 16% which is evidence of the power of our underlying businesses***.
>
> But there were clearly some disappointments in the quarter and I want to speak bluntly about them. First, the performance of the Fossil Power Solutions business is simply unacceptable. We have changed our management team. Wolfgang Dehen will review the challenges, get to the root of it and sort it out. We will come back to you with more details shortly.

Another area is quality related charges in Transportation Systems which are new. And like you, my patience is wearing thin. The new management team there is also in the spotlight to get these problems fixed soon and I don't want to hear the word of Combino any more. But this is a program review which is ongoing in the Transportation division as well, which is now our Mobility division.

***Turning now to the year ahead, we are confirming 2008 top line and earnings outlook given in November. We will grow our revenues at least twice as fast as the global GDP. We will grow our Group profit from operations at least twice as fast as our revenues***. Joe will detail out the financials in a few minutes and I would like to first update you on the progress in the plans we have announced just around 90 days ago.

***We continue our execution against our strategic plan and it's everything about delivery. Words aren't enough and I am pleased to say that in the short time we achieved some significant progress***. Simplifying management and increasing accountability is a core part of our plans and here is what we have accomplished so far.

As you know the Supervisory Board approved our streamlined organization and leadership structure end of November. ***We have in place a tighter and leaner Managing Board including the operating CEOs of the sectors as well as the new divisional structure within each sector. But structure is important but people are more important. And there is a sense of urgency which I have talked about. We have named the CEOs of the divisions as well as the CFOs of sectors and divisions. Everyone understands the goals and timetables and that's all about the accountability and performance***.

With the new leadership in place, the potential that we know is here can be realized as quickly as possible. Clear and concise priorities have been established. The next milestone on our roadmap was to establish target margin ranges for the Industry and Energy sectors as well as for the divisions. And please bear in mind that the Service Rotating Equipment division in the sector Energy will be not reported because of its cross-divisional service character.

* * *

Turning now to the margin improvement plans, ***we have announced today detailed target margin ranges for our Power and Industry sectors as well as for each of our divisions. These are all new*** and if you recall we set a margin range of 14% to 17% for the Healthcare sector in November. I will take you through some context on these ranges.

***We are targeting a margin of 9% to 13% for our Industry sector***. Within the sector we have raised our targets for Industrial Automation and Motion Control substantially as we expect to profit from the attractive PLM market due to our UGS acquisition and a continued optimization of processes. Also the margin range for

Building Technologies has been slightly raised because of increasing demand for energy efficiency solutions.

***The new target margin for the Energy sector has been raised to -- from 11% to 15%. This is a substantial increase compared with the weighted average of the former PG and PTD which is 9% to 13%. The more aggressive targets set for each of our divisions reflect the attractiveness of these markets and our improved performance***.

Achieving our margin target for the Healthcare division will bring us more in line with the performance of the peers. In Imaging & IT we will close the gap between Siemens and the current market leader. We will leverage our number one position in Diagnostics and expect this segment to be a strong contributor to margin improvement with the projected range of 16% to 19%. In our Workflow & Solutions division, we operate in an environment with strong and well established competitors. Although reaching our target of 11% to 14% will likely be challenging, we are confident that we will be able to achieve margins in this range.

The targets for the cross sector businesses SIS and Siemens Financial Services have not been changed and we look at these ranges in a specific way. The upper limits of our target ranges are backed to best in class margins whereas the lower limits are what we would expect to achieve in the event of a downturn in the economic cycle.

* * *

***We are committed to the execution of our TAP plan, just to remind you, which stands for Transparency, Accountability and Performance, and are on track to deliver on the objectives we have set out.***

74. Later on the call, securities analysts directly asked Defendant Kaeser about Siemens' power generation and transportation system businesses. The following exchange took place:

<u>Citigroup - Simon Smith - Analyst</u>:

Hi, good morning. Yes, my question related, I guess unsurprisingly, to Powergen. You obviously had the very significant charge there or the losses for the contracting business and then you were talking about volatility in incoming quarters. Clearly the new management team is still at an early stage in terms of getting to grips with that business. But clearly you do have quite a large amount of visibility in the part of the business that has gone wrong which I guess is good and bad. But I just wondered what you can currently see, if you could quantify the period that you think the issues may affect you and then give some sort of indication for the medium term.

<u>Defendant Kaeser</u>:

Thank you, Simon, and obviously I do understand that Powergen is of essence here. Generally speaking the Group, ***the division has done a very thorough review on all***

***the projects and to all what they've known and what they can think of has been included in the €200 million charge***. By the same token since some of those projects are still in a, I would call it, reasonably early stage I have to be cautious that whether or not that remains stable till the end. ***I'm not suggesting to guide it down. I'm just saying that since the progress on some projects is in the 30% to 50% stages for some of those I'd be cautious for fiscal Q2***. And then we should exactly know what needs to be done and get it over with.

<u>Citigroup - Simon Smith - Analyst</u>:

Okay. So it would be fair to say that once you're six months into the period, the amount that you feel that relates to this will have been accounted for. From that sort of point on, apart from, say, the volatility of equity stakes, you - we should expect you to be trending broadly within your target range.

<u>Defendant Kaeser</u>:

Well, ***I think what I was trying to say is that we have talked everything we -- the division could think of***. Also you know, even with some sensitive questions. By the same token though, ***if you look at the root cause of the charges it's been related to matters of delays in the project start. It's been related to supplier related failures to ship boilers and other topics on time***, predominantly coming out of the fact that it's a very, very strong let's say buyers -- sellers market from the products. So therefore there is uncertainty and I do trust that the new management team will get to the bottom of that quickly. And then see whether there is any more need to do a review on the projects. ***At this point in time, it's taken everything [in the €200 million charge] the division can think of in terms of risks going forward***.

* * *

<u>JPMorgan - Andreas Willi - Analyst</u>:

Good morning. I have a quick follow up question to Simon's and then a question on Osram. On Powergen could you also indicate to what degree some of these problems relate to contracts being taken in one or two years ago at too low margins, and to what degree this is just execution, the issues you mentioned before?

* * *

<u>Defendant Kaeser</u>:

Thanks Andreas. ***On the PG [power generation] clearly everything is execution related. It's not about taking orders at low margins. We've known that. We've continuously communicated in the market that we start projects now which had been booked as order intake in 2004, late 2004, 2005. It is about execution and getting a timely project management together. That's in essence what the majority of the topics are and that leads to a recalculation of the total project and the effects on those projects you see in the €200 million charge***. . . .

75. After this exchange, an analyst tried to determine the nature of the uncertainties associated with Siemens' power generation projects that caused Defendant Kaeser to be somewhat cautious about the upcoming quarter. Defendant Kaeser explained that Defendants "***have gone***" through all the Legacy Projects as of January 24, 2008 and that the only uncertainty that caused him concern was associated with a potential unknown technology matter that may not be understood. The following exchange took place:

> Dresdner Kleinwort - James Stettler - Analyst:
>
> Yes, thank you and good morning. Apart from the issues you've identified in Power Generation and Transport Systems, ***is there anything else out there in the project related areas which could cause problems over the remainder of the year? And have you identified, have you clearly gone through these projects in a detailed way***?
>
> Defendant Kaeser:
>
> ***Yes we've gone through all the projects and actually even sent quite a large amount of people from Audit to help the division to do a thorough review on the issues we've been seeing in project management and in also supplier management.*** Of course some of those issues have been related to suppliers not shipping on time as they have promised and therefore the whole project, as a key turnkey project has been negatively affected. ***I think the uncertainty I would have as a CFO is whether those topics are really the root cause of matters or whether there is some technical challenge which has not been thoroughly understood***. That's why Peter and I have talked to Wolfgang Dehen last week already and asked him. ***And we helped him with that, to set up a technology engineering team to really go to the bottom of matters and make sure that we are not looking for root causes in project management whereas they are in technology. That's I think what we have not quite fully understood and that's why I'm cautious about Q2. But everything else I think we've thoroughly understood and accounted for in the [€200 million]charge***.

76. Following the release of Siemens' financial results for the quarter ended March 31, 2008, securities analysts issued reports, which included, in part, the following commentary:

> Sal. Oppenheim:
>
> ***We have upgraded our estimates for Power Transmission and Distribution because of the good results and high medium term confidence, which Siemens expressed by setting a margin target for both divisions beyond 10%***. Despite very good results of A&D, we have only raised our estimates under-proportionally due to the risk of the

economic slowdown. Against this, we had to reduce the estimates for Power Generation due to €200m charges in Q1, and CFO Kaeser's statement that he cannot exclude further charges in the coming quarter. We also have to recognise that our assumption of declining losses at other operations seems to be too optimistic.

ING:

***Siemens published in line 1Q08 results, and gave visibility and confidence to investors with its new 2010 targets***. The story is far from being over; target price lowered but Buy maintained.

At group level, 1Q08 was in line with market expectations across the board. By division, the best-in-class areas (ABB, PTD) compensated for P&G, TS and Med. ***More than the results, Siemens is confident of its future and presented new 2010 margin targets***. It has raised the upper range of its old targets by 200bp on average, which fits with our estimates. ***Even if these new targets were expected, they should be welcomed as proof of Siemens' resilience and optimism in current conditions***.

Societe Generale:

As expected, management increased its 2010 margin target ranges: 11%-15% for Energy (up from 9%-13%) and 9-13% for Industry (up from 9%-11%). Management had already increased its Medical target to 14-17% (up from 13-15%) last November.

UniCredit:

With regard to FY 08, Siemens emphasized the strong book-to-bill ratio of 1.34, the strongest since Q4/06, and good organic unit sales. We welcome the company's statement that the U.S. real estate crisis will not directly affect the operating business, due to the strong order backlog. In our view, Siemens can offset some economic declines in individual countries through its traditionally strong global presence and its solid business performance in Asia (i.e. China and India). ***With respect to TS and PG, the CFO so far was, however, rather reticent with his comments. However, in general, the outlook for Siemens is strong***. All told, we expect no substantial sequential change in the seasonal pattern for the operating business.

However, the new CEO will have a stronger focus on capital efficiency, organic growth and improving the cash flow. Current order intake, which is reflected in sales at the end of 2008 and the beginning of 2009, is characterized by better margins, in our view. In sum, it seems that the management is satisfied with the overall business performance on an operational level, except for MED, PG and TS projects.

77. The statements referenced above in ¶¶72-75 were materially false and misleading when made because they misrepresented and failed to disclose the following adverse facts, which were known to Defendants or recklessly disregarded by them:

(a) that Siemens was experiencing more than a ***billion*** dollars in cost overruns on a large number of Legacy Projects;

(b) that Defendants commissioned "quite a large amount of people" to conduct extensive "review and audit" on dozens of Legacy Projects that were experiencing significant delays and materially adverse supplier management and project management planning, execution and cost control issues;

(c) that as a result of extensive systemic delays and project management execution failures on a large number of the Legacy Projects, Defendants commissioned "a technology engineering team" to understand whether technology related matters were giving rise to such delays and/or failures;

(d) that the new corporate management structure was implemented by Defendants to address systemic project execution failures that were then causing hundreds of millions of dollars in cost overruns on dozens of the Legacy Projects;

(e) that any "increased profitability" expected from the Company's new corporate structure that eliminated layers of management was significantly dwarfed by massive losses Siemens was experiencing on a large number of the Legacy Projects;

(f) that Siemens' Power Generation division had NOT "done a very thorough review on all the projects and to all what they've known and what they can think of has been included in the €200 million charge" as Defendant Kaeser represented on January 24, 2008;

(g) that the Company's 2008 first quarter group profit from operations of 16% did not "evidence the power of its underlying businesses" as Defendant Löscher represented because Siemens was then experiencing significant delays and materially adverse supplier management and

project management planning, execution and cost control issues and, as a result, had commissioned teams of individuals to "review and audit" dozens of the Legacy Projects;

(h) that the Company's financial results were materially overstated as the Company had improperly accounted for its Legacy Projects. As a result, Siemens' financial statements were not prepared in accordance with IFRS and were, therefore, materially false and misleading, as set forth herein; and

(i) that based on the foregoing, Defendants lacked a reasonable basis for their positive statements about the Company, its prospects and growth.

**The Truth Is Revealed**

78. On March 17, 2008, ***just weeks after Defendant Löscher reassured investors about the Company's "ambitious margin targets for [Siemens'] Industry and Energy sectors, and for all [its] divisions***," Siemens shocked the market when it issued a press release announcing that preliminary estimate of the results for the Company's 2008 second fiscal quarter, the quarter ended March 31, 2008, would include estimated charges of €900 million associated with its long-term contracts, stating, in pertinent part:

> **Siemens Corrects Earnings Forecast for the Current Fiscal Year**
>
> As previously announced, ***Siemens AG has launched an extensive review of major projects in the current quarter***, focusing particularly in the Divisions Fossil Power Generation of the Energy Sector, the Mobility Division in the Industry Sector, and Siemens IT Solutions and Services.
>
> ***The results of the review so far indicate a substantial impact on earnings in the current fiscal year***. Nevertheless going forward, the path to profitable growth has been charted. The commitment to the targets for 2010 is confirmed. Definite progress toward these targets is expected in 2009.
>
> ***Siemens expects the negative impact on earnings to amount to approximately €900 million in the current quarter***. The expectation is that this amount represents the largest piece of any additional financial burdens for 2008.

> ***In the Fossil Power Generation Division, the large number of turnkey projects that have accumulated since 2004 has had an adverse effect. New exposure can be attributed to structural challenges in the supplier markets and to delays recruiting experienced project engineers. New exposure in the Mobility Division resulted from delays in the awarding of major projects as well as from the ongoing product rehabilitation programs in the Combino business.***

79. That same day, March 17, 2008, Defendants held a conference call with securities analysts to discuss Siemens' expected €900 million, ***or $1.4 billion,*** charge. On this call, Defendants indicated that the expected charges:

- did not emanate from a very limited number of projects, but, rather, were ***systemic in nature***, associated with dozens of large projects and numerous smaller ones;
- were largely related to projects that had a relatively long history and had been ongoing for several years, ***many of which were very near completion***;
- were not the result of market related conditions, but, rather, were due to company-specific, project management issues;
- were, in large part, associated with an on-going inability to effectively execute long term projects, which, among other things, caused project delays that resulted in the Company incurring increased material costs as existing supply agreements expired; and
- ***were associated with the recognition of previously unrecorded project expenses uncovered during a one-time "review and audit" of dozens of contracts***.

80. As part of his prepared remarks, Defendant Löscher made the following statements concerning Siemens' end of Class Period charges:

> As you have seen from the announcement this morning, we expect charges up to €900 million in the second quarter. ***This is based on intermediate results of a thorough review and audit of turnkey and other similar projects***.
>
> At our Q1 call, I mentioned that we are assessing this project across the company. This is very much in line with the openness, transparency and accountability that is at the heart of how Siemens is reenergizing its organization. And before giving details, I want to stress that the actions we are going to discuss today, including the charges taken in Q2, do not alter any of the financial and operational priorities we've been talking about since November. ***This is*** a painful, but necessary step towards getting our businesses moving forward faster and it's also ***clearly a step that will force a no surprise, no excuse culture going forward***.

* * *

***The issues which we are addressing and communicating today are clearly related to legacy projects. For both businesses [energy and industry]we have new sector and division CEOs in place since January. They are accountable going forward for driving the necessary changes and delivering the results committed***.

* * *

Let me sum up we are obviously very disappointed about the deterioration of these legacy projects, and please have no doubt about that. We identified the problems in these projects, we detailed how they got to, where they are and we have set out how we intend to remedy them. ***Going forward we will be much more selective with turnkey projects in order to ensure an attractive risk return profile***.

81. Later on the conference call, securities analysts challenged management about the Company's expected charges:

<u>Andreas Willi - JPMorgan - Analyst</u>:

***And a second question on your turnkey ability, particularly in Power Generation where you blame part of it on the market, but obviously there are competitors of you out there that continue to execute well in the same difficult market. Maybe there are differences in the supply chain and differences in the in-house value added, but overall are you not worried that Siemens in Power Gen just doesn't have project execution capabilities that are not just related to changing a few top management members***?

<u>Heinrich Hiesinger - Siemens, CEO Industry Sector</u>:

***I don't blame it on the markets; I think we need to face that we have not executed well. And it's my commitment that we will implement actions and measures to do better as of today***. And the third one, the capability, I strongly believe that we have capability in turnkey business and we will also continue to selectively look into those kinds of business, but under the condition that we earn money with it.

<u>Wolfgang Dehen - Siemens AG, CEO Energy Sector</u>:

Andreas, if I may add to that. I think what we have seen in the very thorough project review was, as far as root causes are concerned, that the project resources have been fundamentally overstretched by the number of projects which have been taken in as orders as well as which were just about to be executed as a project.

Having said that, what that in itself means is that first of all ***we have delays in the projects. Those delays lead in essence to the fact that our binding price offers 2005 are expiring and therefore the company has to face much more unfavorable***

***procurement condition as it was originally agreed upon. So that has been a very [definite] root cause as the sequence of events what we are seeing***. . . .

* * *

<u>Andreas Willi - JPMorgan - Analyst</u>:

***In terms of your supply agreements, you said, obviously they were running out, but that's something you should have known about. You knew that they would run out, so why is this such a surprise***?

<u>Wolfgang Dehen - Siemens AG, CEO Energy Sector</u>:

***I think the result has more been the fact that the delays had not been expected to be that lasting***. So the triggering events come from the fact that the project resources could not execute on climate and therefore we're running into uncertainties about how long the suppliers will stick to their agreed upon promises.

* * *

<u>Roland Pitz, - UniCredit - Analyst</u>:

Yes, good morning sir. One simple question. ***Why*** [is it] that ***you don't see any pressures from suppliers either in the industrial automation or in your industrial unit*** and only these prime named units?

<u>Wolfgang Dehen - Siemens AG, CEO Energy Sector</u>:

Well I think ***the reason that we do not have those supplier rated topics in other areas is that first of all those product businesses are turning very, very well***. The resources are much aligned with capacities and commitment to the customers, so ***therefore this is, I think, a very well run operation there. So Siemens as a company is able to manage that***. There are a few spots though where we do have root causes and it's an important, Roland. Where we do have root causes which eventually cause the delays, and those delays cause renegotiations or running out of timelines with the suppliers.

***The root cause clearly is on project management, the root cause clearly is that divisions or Power division has been over its head in times of capacity planning***. I think that's just a clear statement. And we needed to thoroughly investigate and [audit] into the topics we have seen already in the last [season] quarters, and are we to believe we've got the bottom of that. And that's we announced to the markets that we expect those charges in Q2 and that we will complete the review any time soon.

* * *

Mark Troman - Merrill Lynch - Analyst:

Yes, good morning. I'm just trying to understand, particularly in the Power division, ***I guess there are three issues here. One is the actual prices and terms that the contracts were struck at, the historical turnkey contracts, two is the supplier problems that have been highlighted and three is the absolute execution. Can you give us a bit more sense then of what is the main problem out of those three***? Is it all three or is it concentrated in one area?

And going forward, the second question. Any drivers of any potential future charges, is that just going to be related to suppliers or could there be -- do you think you could iron out the execution problems? Thank you.

Heinrich Hiesinger - Siemens, CEO Industry Sector:

Well let me repeat again, I think also what Joe Kaeser said. ***It's an issue primarily with execution of the project with project management with an underestimation of the binding period of supply, and furthermore an issue of underestimating capacity in terms of resources in engineering. So going forward we, as I said, implemented actions. We will not accept an offer any more before we have secured critical components and supplies, and before we have identified the necessary resources in terms of capacity in engineering and also in capacities in our plans***. So that's the process which has been implemented and is followed thoroughly by the CEO of the divisions and also by myself and my CFO.

Mark Troman - Merrill Lynch - Analyst:

Okay so you're basically saying you need to get everything in place before you take on a contract?

Heinrich Hiesinger - Siemens, CEO Industry Sector:

We will get everything in place and secure key critical components and capacity before we accept to submit an offer.

* * *

Tim Shultz-Malander - Bear Stearns - Analyst:

[O]n a recent conference you put up a slide looking at the breakdown of recent orders within Power Generation and what percentage of those orders had been started. And even from 2004/2005 about 20% of the orders won had not yet been started, is what I think the slide was saying. And I'm just curious whether that is in some way related to some of the problems we're discussing this morning?

Heinrich Hiesinger - Siemens, CEO Industry Sector:

* * *

***And so many of those orders which have been investigated and also are at hand here relate back to 2004 and 2005. So in that sense what this audit has been all about and the investigation has been all about that you really make sure that we have addressed all the potential issues*** which are related to what Wolfgang Dehen has been relating to in his remarks. ***So it is indeed 2004, 2005, 2006 and that's what I think the charges in the maturity are all about.***

82. As a result of these statements, on March 17, 2008, the price of Siemens' ADRs plunged $19.44 per ADR, or more than 15%, on extremely heavy trading volume.

83. Thereafter, the stunned analyst community that closely followed Siemens chided the Company's management and issued reports that downgraded Siemens' ADRs and lowered their expected price targets on the ADRs. These reports included the following comments about Siemens, its management and Defendants' misrepresentations during the Class Period:

JPMorgan:

**Lack of visibility on future charges concern**: ***Scale of charges surprised***, but this appears in the price after today. These "clean-outs" often represent a buying opportunity as new divisional management has every incentive to maximize right-downs. However, there are three issues in this specific case: 1) ***Siemens said that there likely will be more charges to come*** in PG and Transport, and hence, this topic will continue; 2) there could additional charges for the SG&A program; and 3) ***most importantly, Siemens just does not seem to know how to manage turnkey projects - not securing key components while guaranteeing delivery and price to customer is a beginner's mistake***.

* * *

In the Fossil Power Generation Division, Siemens will book charges amounting to €600mn. Siemens had booked €200mn of charges in Q1 and indicated further charges. ***As late as two weeks ago, we met with the company at the Medical analyst meeting and did not come away with the impression that the additional charges would be anywhere near the €600mn***. Siemens has completed 80% of the volume and 39 out of the 62 projects under review and it said that it started with the riskier cases and hence, future charges should be lower - we expect a total of another €300mn.

The charge relate to contract execution issues in which Siemens cannot deliver on cost and on time due to constraints on its own operations and that of its suppliers. Siemens said that it is facing cost increases that outstrip what it could increase its selling prices. ***Siemens is has basically miss-managed its PG turnkey business as competitors continue to deal better with similar pressure.*** Siemens has committed delivery dates and prices to its customers while not securing quantity and price of components. Siemens faced higher prices and delays as supply agreements run out. ***Given that Siemens divisional management must have know about favorable supply agreements running out, it is difficult for us to see how this event can be a surprise for top management unless information just did not flow, which would not be the first time and questions the quality of the information provided to the market by central management***.

<u>Societe Generale</u>:

**Losing credibility with kitchen sink accounting**

This profit warning is likely to damage the reputation of Siemens' new management team. Sceptics will suggest that the group as a whole is repeating past mistakes of over promising and under delivering. ***The profit warning comes just over one month after Siemens set out new operating targets for its individual businesses and the market will question why this announcement came today***. In addition Siemens' management has indicated that there is likely to be additional charges to come. 20% of Power Generation turnkey projects still need to be reviewed.

However, the charge announced today, especially the €600m in Power Generation division is likely to involve large elements of kitchen sink accounting. The new management team in Power Generation has been in place since the beginning of the year. These charges on legacy contracts will clear the slate for the new management team and allow for a cleaner performance going forward.

<u>Deutsche Bank</u>:

**Legacy woes**

***We were very disappointed by the scale of the legacy contract problems uncovered at Siemens'*** power and trains operations. ***We are sceptical [sic] that the worst is over and find it hard to avoid the conclusion that there are serious project management and control issues that need to be addressed***. While we still consider Siemens under-valued, we expect it will stay that way until there is greater clarity about its prospects. We therefore downgrade from Buy to Hold.

**€900m charges for legacy contracts…**

***Siemens surprised us - and the market - by announcing charges at Fossil Power (€600m), Mobility (€200m) and SIS (€100m).*** The charges all relate to legacy contracts and have been caused by a wide range of factors such as supply shortages,

engineering constraints and poor commercial judgment. ***The problems can in our opinion be summarised as poor project management and control***.

**…with more to come**

Siemens is confident that today's charges represent the vast majority of the final bill. ***We do not share this confidence***.

* * *

**The €900m surprise…**

Siemens surprised us today by announcing €900m of charges, mainly relating to legacy problems at Fossil Power Generation. We were expecting further charges after the poor Q1 results but ***we did not expect anything of this size***. We also did not expect charges at the Mobility and Siemens IT Solutions & Services (SIS) divisions.

**Figure 1: Siemens charges (€m)**

| Division | | Amount | comment |
|---|---|---|---|
| **New name** | **former name** | | |
| Fossil Power Generation | Power Generation | 600 | Siemens has reviewed over 80% of 62 large projects; more charges therefore likely |
| Mobility | Transportation Systems | 200 | Split into Combino (€40m), Transrapid (€50m) and other smaller projects |
| SIS | SIS | 100 | UK government project cancellation |
| **Total** | | **900** | |

*Source: Deutsche Bank, company data*

* * *

***Siemens is auditing 62 legacy projects*** and 39 have been reviewed so far. The 39 represent over 80% of the backlog by value; the rest should be reviewed by the end of March. The CEO of Energy said on the conference call that over half of these contracts were due for completion in FY2008 and another 35% in FY2009. ***As we are already half way through FY2008, this means that Siemens has found it necessary to make large provisions for contracts very close to completion***.

* * *

Siemens stated that it had charged the "vast majority" of the expected total bill but with 23 projects still being audited and such an inexperienced workforce, ***we find it difficult to have much confidence in this assurance***.

* * *

The problems at Mobility fell into three areas:

**The Curse of Combino**

***Siemens reported its first problems with the lightweight Combino trams back in 2004 and we though that this was now history***. The carriages were suffering from stress cracking and the structures had to be expensively repaired. Siemens reported that it was accruing another €40m of costs as repairs are proving more expensive than expected. As only 241 of the 475 affected cars have been repaired so far, further charges are possible in our opinion.

**Transrapid costs in China**

Mobility also charges €50m of costs associated with the planned extension of the Shanghai maglev line in China. ***As we understand it, Siemens had undertaken €50m of engineering work without any contractual cover on the basis that the timetable was tight and the client was going to place the order***. We have no problem with such commercial risks but ***we do have a problem with the accounting treatment. Siemens decided to capitalise these costs as inventory despite the lack of any firm order. Now that the project has been delayed, these costs have had to be charged. These were, in effect, bid costs. We think they should have been charged in the first place***.

**Other smaller projects**

***The remaining €110m is for numerous smaller projects***.

<u>fairesearch</u>:

**Management published a profit warning out of the blue**

* * *

The profit warning of €900m surprised the market but looks moderate compared to the share price drop. ***The main issue is the lack of confidence, transparency and no efficient risk management. Therefore we changed our recommendation from "BUY" to "HOLD" and reduced our target price from €120 to €70 per share***.

* * *

**Siemens management lost in space**

***The profit warning of €900m less income surprised the market participants substantially. Share price dropped nearly 18% within one day which never happened before***. Management was not really aware of the share price drop because compared to the €900m restructuring charges Siemens shares lost in one day 21.4% or €13bn of its market capitalisation (closing Friday: €80.11 compared to €65.88 today). This drop and loss of market capitalisation is in no relation to the restructuring charges of €900m. ***In the conference call management gave the reasons for the profit warning which were quite scary from an analyst point of view***:

1. Massive price increases of raw materials and components for turnkey projects (fossile power generation) can not be compensated. Boilers and workforce in short supply.

2. 40% of the engineers have less than three years experience

3. Risk management and controlling are not efficient enough

***These confessions made by the management look more than devastating***. Management is indicating that less experienced engineers offer turnkey projects with low margins to customers in regions where Siemens never made business with. In addition the risk management is not yet well established. This statement also indicates that there is still more to come. ***Therefore Siemens shares are a no go for investors because the risk profile is not very transparent. Management has completely lost credibility***.

Bear Stearns:

**More Bad News Likely, Cutting Rating to Peer Perform**

**What's going on?**

Siemens has announced it will take €900m in charges relating to turn-key projects in Power Generation, Transportation Systems and IT Services and Solutions. ***We are concerned that the details behind these provisions suggest deeper operational issues at the company.***

The company is suggesting that these issues relate to past orders and a weak contract tendering process and that poorly structured turn-key contracts have come unstuck as capacity constraints have triggered project over-runs.

**What's Our Take on this?**

To our mind, all industry participants are operating within the same constrained parameters as Siemens. The Company suggests that these are historical issues - but the details behind them strike us as more ongoing and operational. We think the approach taken towards business execution is 'loose', relative to some industry peers. Going forward, the challenge will be to deliver much tighter operational execution.

M. M. Warburg & Co.:

- Profit warning: problems with major projects could cut earnings by around € 900 m in Q2 2008

- PG has overstretched itself with turnkey projects

- We are downgrading our price target from € 111 to € 104, but regard the sharp fall in the share price as clearly exaggerated

Independent International Investment Research PLC:

> ADR SELL Siemens issued a profit warning cutting its earnings estimate by approximately €900 for 2Q 08. We are likely to revise our estimates downwards in our next update report. Moreover, we continue to anticipate a significant negative currency impact on the ADR over the long term and hence downgrade the ADR rating from a HOLD to a SELL until we reassess the stock in our next update report.

**Siemens' Class Period Financial Statements Were Materially False and Misleading and Violated IFRS**

84. During the Class Period, Siemens represented that the financial statements for the year ended September 30, 2007 and the quarter ended December 31, 2007, that it issued to investors, were prepared in accordance with IFRS and the interpretations issued by the International Accounting Standards Board ("IASB") as adopted by the European Union.

85. These statements were materially false and misleading because Siemens improperly accounted for a large number of the Legacy Projects, thereby overstating its operating results by hundreds of millions of euros during the Class Period and because Siemens failed to disclose the contingent financial effects ensuing from numerous supplier agreement terminations.

**Applicable Accounting Principles and Securities Regulations**

86. IFRS are those principles adopted by the IASB and recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted international accounting practices at a particular time. IFRS are promulgated by the IASB (formerly the Board of the International Accounting Standards Committee ("IASC")).

87. International Accounting Standards ("IASs") were issued by the IASC from 1973 to 2000. When the IASB replaced the IASC in 2001, it amended and replaced some IASs and issued new IFRSs on topics for which there were no previous IASs. In addition to numbered pronouncements, IFRS provides other authoritative pronouncements including, *inter alia,* the Framework for the Preparation and Presentation of Financial Statements ("Framework").

88. As a publicly traded company, Siemens is required by the EU Commission, Regulation (EC) No. 1606, Article 4, to issue financial results in accordance with IFRS. In addition, as a publicly held company whose securities trade on the NYSE, Siemens is responsible and required to maintain books and records in sufficient detail to reflect the transactions of the Company and prepare financial statements in accordance with the Exchange Act:

> (A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and
>
> (B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that –
>
> i. transactions are executed in accordance with management's general or specific authorization;
>
> ii. transactions are recorded as necessary to (I) permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) maintain accountability for assets;
>
> iii. access to assets is permitted only in accordance with management's general or specific authorization; and
>
> iv. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. . . (15 U.S.C. §78m(b)(2)).

**Siemens' Financial Statements Improperly Accounted for the Legacy Projects**

89. IFRS required Siemens to account for its long-term construction contracts pursuant to IAS No. 11 *Accounting for Construction Contracts*. Pursuant to IAS No. 11, ***when the outcome of a construction contract can be estimated reliably***, contract revenue and contract costs associated with the construction contract shall be recognized as revenue and expenses respectively, by reference to the stage of completion of the contract activity at the balance sheet date. ***Any expected loss, however, on the construction contract should be immediately recognized***.

90. As alleged herein, and as Defendants have effectively admitted, prior to and during the Class Period, Siemens was unable to reliably measure the costs of numerous Legacy Projects. Accordingly, Siemens was precluded from reporting any expected profit on such projects because IAS No. 11 further provides that ***when the outcome of a construction contract cannot be estimated reliably: (1) revenue shall be recognized only to the extent of incurred contract costs that it will probably recover; and, (2) contract costs shall be recognized as an expense in the period in which they are incurred. When it is probable that total contract costs will exceed total contract revenue, the expected loss shall be immediately recognized***.

91. During the year-end September 30, 2007 and the quarter ended March 31, 2008, Siemens' operating income was overstated by hundreds of millions of euros when it improperly recognized contract revenue and contract costs based on the stage of completion of numerous contracts that it could not reliably estimate. As such, Siemens overstated its reported income by recognizing project revenue in excess of its recoverable costs and by failing to recognize its total contract costs in the period in which they were incurred. In so doing, Siemens violated the dictates of IFRS, specifically, IAS No. 11, and materially overstated its financial results during the Class Period.

**Additional Violations of IFRS**

92. As noted herein, Defendants knew or were reckless in not knowing that a massive amount of its supplier agreements were set to expire prior to and during the Class Period. Nonetheless, Siemens' financial statements during the Class Period, in violation of IFRS, failed to disclose the financial ramifications associated with such terminations.

93. For example, IAS No. 34, *Interim Financial Reporting*, provides:

> An entity shall include the following information, as a minimum, in the notes to its interim financial statements, if material and if not disclosed elsewhere in the interim financial report. The information shall normally be reported on a financial year-to-

> date basis. However, the entity shall also disclose any events or transactions that are material to an understanding of the current interim period:
>
> (i) the nature and amount of items affecting assets, liabilities, equity, net income, or cash flows that are unusual because of their nature, size, or coincidence;
>
> * * *
>
> (ii) the nature and amount of changes in estimates of amounts reported in prior interim periods of the current financial year or changes in estimates of amounts reported in prior financial years, if those changes have a material effect in the current interim period;
>
> * * *
>
> (iii) material events subsequent to the end of the interim period that have not been reflected in the financial statements for the interim period.

94. In addition, IAS No. 10, *Events After the Reporting Period*, requires disclosure of certain events that arise after the balance sheet date, but prior to the issuance of financial statements:

> If an entity receives information after the reporting period about conditions that existed at the end of the reporting period, it shall update disclosures that relate to those conditions, in the light of the new information.
>
> In some cases, an entity needs to update the disclosures in its financial statements to reflect information received after the reporting period, even when the information does not affect the amounts that it recognizes in its financial statements. One example of the need to update disclosures is when evidence becomes available after the reporting period about a contingent liability that existed at the end of the reporting period.

95. These provisions of IFRS required Siemens' financial statements during the Class Period to disclose the financial ramifications associated with the massive amount of its supplier agreements that were set to expire.

96. Furthermore, Regulation S-X requires that material contingencies be disclosed in interim financial statements regardless of whether a significant change from the previous year had occurred (17 C.F.R. §210.10-01(a)(5)) and provides that financial reports filed with the SEC that fail

to comply with Generally Accepted Accounting Principles -- or, for foreign issuers, a comprehensive body of accounting principles (such as IFRS) -- are presumed to be misleading and inaccurate.

97. During the Class Period, the Company represented that the financial information it presented to investors was presented in conformity with IFRS. Defendants knew or recklessly ignored that Siemens was incapable of reliably estimating the cost on dozens of Legacy Projects and dispatched teams of Company auditors as a result. Nonetheless, Siemens issued financial statements in violation of IAS No. 11, thereby materially overstating the Company's operating results for the year ended September 30, 2007 and the quarter ended December 31, 2007.

98. In addition to the above noted violations of IFRS, the financial statements issued by Siemens during the Class Period were presented in violation of at least the following IRFS standards:

(a) The principle that an asset is a resource controlled by the enterprise as a result of past events (Framework 1);

(b) The principle that financial statements should "provide information about the financial position, performance and changes in financial position of an entity that is useful to a wide range of users in making economic decisions." (Framework 12);

(c) The principle that financial statements should "show the results of the stewardship of management, or the accountability of management for the resources entrusted to it." (Framework 14);

(d) The principle that financial statements should provide information about the "economic resources" controlled by an entity, as well as "its financial structure, its liquidity and solvency, and its capacity to adapt to changes in the environment in which it operates." (Framework 6);

(e) The principle that financial statements should provide information about an entity's performance during a period, "in particular its profitability . . . in order to assess potential changes in the economic resources that it is likely to control in the future" and, importantly, "the variability of performance." (Framework 17);

(f) The principle that the information in the financial statements should be reliable in that it represents what it purports to represent (*i.e.*, "free from material error and bias"). That information should be reliable as well as relevant is a notion that is central to accounting. (Framework 31);

(g) The principle that prudence should be exercised in preparation of financial statements in response to the "uncertainties that inevitably surround many events and circumstances." "Prudence is the inclusion of a degree of caution" in such preparation "such that assets or income are not overstated and liabilities or expenses are not understated." (Framework 37);

(h) The principle of completeness, which means that nothing material is left out of the information that may be necessary to ensure that the financial statements meet the criteria of reliability and relevance. (Framework 38);

(i) The principle that financial statements have the characteristic of comparability in that "the financial effect of like transactions and other events must be carried out in a consistent way throughout an entity . . . and for different entities." (Framework 39);

(j) The principle that the timeliness of reporting should be considered, as an "undue delay" may impair the relevance of financial information. (Framework 43); and

(k) The principle that "the application of principal qualitative characteristics and of appropriate accounting standards normally results in financial statements that convey what is

generally understood as a true and fair view of, or as presenting fairly," "the financial position, performance and changes in financial position of an entity." (Framework 46).

**Additional Scienter Allegations**

99. As alleged herein, Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading, knew that such statements or documents would be issued or disseminated to the investing public, and knowingly and substantially participated or acquiesced in the issuance of such statements or documents in violation of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding Siemens' Legacy Projects, their control over and/or receipt and/or modification of Siemens' allegedly materially misleading misstatements, and their positions with the Company, were made privy to confidential proprietary information concerning Siemens, and participated in the fraudulent scheme alleged herein.

100. Because of their executive and managerial positions with Siemens, the Individual Defendants had access to the adverse non-public information about the business, finances, markets and present and future business risks of Siemens particularized herein via access to internal corporate documents, conversations or connections with corporate officers or employees, attendance at management meetings and committees thereof and/or via reports and other information provided to them in connection therewith.

101. Since the Company's executive management had responsibility for Siemens' activities during the Class Period, their knowledge of the wrongful conduct alleged herein can be imputed to Siemens.

102. In addition, the Individual Defendants had knowledge of the increasingly adverse conditions associated with the Company's Legacy Projects during the Class Period. In fact, the

Individual Defendants routinely received detailed reports about the on-going status of Siemens' Legacy Projects and with full knowledge of extensive project delays and significant project and supplier management failures and dispatched teams of Company auditors to help conduct a "review and audit" of such projects to help the Individual Defendants better understand the reasons for such failures. Indeed, Defendants commissioned such teams of employees ***after*** learning that project and supplier management failures were causing extensive project delays and massive cost overruns, which ultimately resulted in a €900 million charge during the quarter ended March 31, 2008.

103. With full knowledge of this significantly adverse information, Defendants made false and misleading representations about the Company during the Class Period, including:

- raising Siemens' 2008 target profit margins;
- announcing Siemens' 2008 operating profit would grow at least twice as fast as its sales;
- announcing Siemens would exceed Fit42010 program goals;
- announcing "ambitious" 2008 profit margin targets for Siemens' Industry and Energy sectors;
- confirming Siemens' 2008 earnings outlook and 2008 profit margin target of 9%-13% for the Industry sector and 11%-15% for the Energy sector as late as January 24, 2008.

104. The Individual Defendants monitored and were aware of all significant business and operational developments at the Company. The ongoing project delays, cost overruns and significant project and supplier management failures, along with the related "review and audit" of such matters, occurred over an extended period of time. Indeed, Defendants were routinely informed of such matters and the adverse consequences associated with them. Nonetheless, Defendants failed to disclose and misrepresented Siemens' true operating performance and prospects during the Class Period.

105. The Company's Legacy Projects were multi-year, fixed priced contracts, which subjected Siemens to significant risks, including financial, performance, reputational and customer-specific and/or country-related risks. For example, profit margins realized on such fixed-priced contracts may be compromised as a result of quality issues, cost overruns or contractual penalties caused by technological problems, adverse project site development, subcontractor performance issues and/or other logistical difficulties.

106. In addition, certain of Siemens' multi-year contracts included demanding installation and maintenance requirements and performance criteria relating to timing, unit cost requirements and compliance with government regulations, which, if not satisfied, could subject the Company to penalties and/or assessments.

107. As a result, it was incumbent upon Defendants to closely monitor Siemens' operational and financial performance on the Legacy Projects. This is particularly the case given Siemens' revenue recognition policy, which, according to the Company's fiscal 2007 Form 20-F, ***"places considerable importance" on maintaining accurate on-going assessments of its Legacy Project performance and costs***. The 2007 Form 20-F, states, in pertinent part, as follows:

> The Company's Groups, particularly PG, TS, I&S, PTD and SBT, conduct a significant portion of their business under construction contracts with customers. ***The Company generally accounts for construction projects using the percentage-of-completion method, recognizing revenue as performance on a contract progresses. This method places considerable importance on accurate estimates of the extent of progress towards completion. Depending on the methodology to determine contract progress, the significant estimates include total contract costs, remaining costs to completion, total contract revenues, contract risks and other judgments. Management of the operating Groups continually reviews all estimates involved in such construction contracts and adjusts them as necessary***.

108. Since Siemens' Class Period financial statements were purportedly prepared in accordance with IFRS as adopted by the European Union, it was required to account for its long-

term construction contracts pursuant to International Accounting Standard No. 11 *Accounting for Construction Contracts*, which provides, in part, that:

- contract revenue and associated costs are to be recognized by reference to the stage of completion of the contract activity, provided that "***the outcome of a construction contract can be estimated reliably***";
- when the outcome of a construction contract cannot be estimated reliably, contract costs are to recognized as an expense in the period in which they are incurred; and
- expected losses on the construction contract shall be recognized immediately.

109. Accordingly, the Individual Defendants, as senior executive managers of Siemens and members of the Company's top management body, its Managing Board, were obligated to closely monitor Siemens' operational and financial performance on the Legacy Projects during the Class Period.

110. According to CW1, a former planning/scheduling Engineer in Siemens' PG group, the Company maintained various processes and procedures that tracked project management, including an SAP application, which was employed by Siemens worldwide throughout the Power Generation group. According to CW1, the SAP system tracked various metrics, including man-hours expended on the project, as well as estimated and actual expended costs, materials' costs and procurement activity, and a host of other data.

111. CW1 explained that the Siemens' field personnel utilized "a quite elaborate system to track [the financial] health" of a power plant construction project. This system indicated whether a particular project was on schedule or within budget. If a project was not on schedule or on track to be profitable, "flags were put up" and "a recovery plan" was adopted so that the project could return to profitability.

112. According to CW3, another individual with a long-time association with Siemens, most recently as a PG Senior Projects Control Manager, Siemens utilizes various means to track

project performance. For example, CW3 stated that the Company applies "the critical path method schedule," which, according to CW3 is the industry-standard for the planning and execution of projects. CW3 also stated that Siemens utilized an SAP system on a company-wide basis that allowed Company personnel in Germany to monitor project-related data.

113. In addition, CW3 stated he/she (and other Siemens personnel in a similar capacity) prepared formal reports that analyzed project equipment costs incurred to date, budgeted equipment costs, and expected equipment cost to complete the project. CW3 explained that any variance in excess of $50,000 was accompanied by a detailed project risk explanation on a so-called "Risk and Opportunity Reports," that were prepared on a regular basis.

114. Defendants had a duty to disseminate, or cause to be disseminated, accurate and truthful information with respect to Siemens' more significant risks, its risk related controls and its true operating results and to promptly correct any previously disseminated information that was misleading to the market. As a result of Defendants' failure to do so, the price of Siemens' securities were artificially inflated during the Class Period, damaging Plaintiff and the Class.

115. The Individual Defendants, because of their positions with Siemens, controlled the contents of the Company's public statements, press releases, and quarterly and annual reports disseminated throughout the Class Period. Each Individual Defendant was provided with or had access to copies of the reports and press releases alleged herein to be false and/or misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information, the Individual Defendants knew or recklessly disregarded that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public and that the positive representations that were being made were false and misleading. As a result, each of the Individual Defendants is

responsible for the accuracy of Siemens' corporate statements and therefore responsible and liable for the representations contained therein.

116. Each of the Defendants is liable as a primary violator in making false and misleading statements, and for participating in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Siemens' securities during the Class Period.

117. As alleged herein, Defendants acted with scienter in that each such Defendant knew or recklessly disregarded that the public documents and statements, issued or disseminated by or in the name of the Company, were materially false and misleading, knew or recklessly disregarded that such statements or documents would be issued to the investing public, and knowingly and substantially participated or acquiesced in the issuance of such statements or documents as primary violators of the federal securities laws. Defendants, by virtue of their receipt of information reflecting the true facts regarding Siemens, its business risks and true operations, their control over and/or receipt of Siemens' allegedly materially misleading misstatements, and/or their associations with the Company which made them privy to confidential proprietary information concerning Siemens, were active and culpable participants in the fraudulent scheme alleged herein. Defendants knew and/or recklessly disregarded the false and misleading nature of the information that they caused to be disseminated to the investing public.

118. Defendants were further motivated to engage in this course of conduct in order to allow the Individual Defendants and other Company insiders, while in possession of materially adverse information, to sell more than 215,000 shares of their personally-held Siemens shares for gross proceeds in excess of €22 million. The following chart sets forth the insider trading:

| **Insider Name** | **Date** | **Shares** | **Price** | **Proceeds** |
|---|---|---|---|---|
| Juergen Radomski | 11/19/07 | 28,945 | € 96.06 | € 2,780,457 |
| Uriel J Sharef | 11/20/07 | 30,000 | € 96.79 | € 2,903,700 |

| | | | | |
|---|---|---|---|---|
| Joe Kaeser | 11/21/07 | 4,714 | € 96.25 | € 453,723 |
| Rudi Lamprecht | 11/30/07 | 1,430 | € 102.48 | € 146,546 |
| | 11/30/07 | 570 | € 102.47 | € 58,408 |
| | 12/10/07 | 45,465 | € 107.99 | € 4,909,765 |
| | | 47,465 | | € 5,114,720 |
| Klaus Wucherer | 12/03/07 | 81,480 | € 102.50 | € 8,351,700 |
| Thomas Rackow | 12/07/07 | 5,145 | € 106.18 | € 546,296 |
| Eduardo Montes | 12/07/07 | 17,800 | € 106.18 | € 1,890,004 |
| | | 215,549 | | €€22,040,599 |

**Loss Causation/Economic Loss**

119. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated Siemens' securities and operated as a fraud or deceit on Class Period purchasers of Siemens' securities by misrepresenting the Company's financial performance and future business risks. Defendants achieved this façade of success, growth and strong future business prospects by making misrepresentations about Siemens' Legacy Projects. As detailed above, when Defendants' prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, the price of Siemens' securities fell precipitously as the prior artificial inflation came out of the price of Siemens' securities. As a result of their purchases of Siemens' securities during the Class Period, Plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

120. By improperly concealing their conduct, Defendants presented a misleading picture of Siemens' business and risks. Thus, instead of truthfully disclosing the risks and uncertainties facing Siemens, Defendants concealed the Company's adverse exposure to massive project cost overruns on dozens of Legacy Projects. During the Class Period, Defendants repeatedly emphasized that Siemens' exposure to such risk was minimal. These representations caused and maintained the

artificial inflation in the price of Siemens' securities throughout the Class Period and until the truth was revealed to the market.

121. Defendants' false and misleading statements had their intended effect and caused Siemens' securities to trade at artificially inflated levels throughout the Class Period, reaching a closing price as high as $154.48 per ADR. When Defendants publicly disclosed the truth about dozens of its Legacy Projects, the price of Siemens' ADRs dropped more than 15%, from $124.54 on March 14, 2008 to $105.10 on March 17, 2008. This drop removed the inflation from Siemens' ADR price, causing real economic loss to investors who had purchased them during the Class Period.

122. The decline in the price of Siemens' securities at the end of the Class Period was a direct result of the nature and extent of Defendants' deception finally being revealed to investors and the market. The timing and magnitude of the declines in Siemens' securities negate any inference that the loss suffered by Plaintiff and other Class members was caused by changed market conditions, macroeconomic or industry factors, or Company-specific facts unrelated to Defendants' fraudulent conduct. The economic loss, *i.e.*, damages, suffered by Plaintiff and other members of the Class was a direct result of Defendants' fraudulent scheme to artificially inflate the price of Siemens' securities and the subsequent significant decline in the value of Siemens' securities when Defendants' prior misrepresentations and other fraudulent conduct was revealed.

**Applicability of Presumption of Reliance:**
**Fraud on the Market Doctrine**

123. Plaintiff will rely upon the presumption of reliance established by the fraud on the market doctrine in that, among other things:

(a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;

(b) The omissions and misrepresentations were material;

(c) The Company's securities traded in efficient markets;

(d) The misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and

(e) Plaintiff and other members of the Class purchased Siemens' securities between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

124. At all relevant times, the market for Siemens' securities was an efficient market for the following reasons, among others:

(a) Siemens' ADRs met the requirements for listing, and were listed and actively traded on the NYSE, a highly efficient market;

(b) Siemens' shares met the requirements for listing, and were listed and actively traded on the FSE, a highly efficient market;

(c) As a public company, Siemens regularly disseminated periodic public reports to investors;

(d) Siemens regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(e) Siemens was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

125. As a result of the foregoing, the market for Siemens' securities promptly digested current information regarding Siemens from publicly available sources and reflected such information in the price of Siemens' securities. Under these circumstances, all purchasers of Siemens' securities during the Class Period suffered similar injury through their purchase of Siemens' securities at artificially inflated prices and a presumption of reliance applies.

**No Safe Harbor**

126. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, the statutory safe harbor does not apply to any forward-looking statements pleaded herein and Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements were made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Siemens who knew that those statements were false when made. Alternatively, to the extent there were any forward-looking statements, no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements were disclosed.

127. Defendants failed to provide any meaningful discussion of the risks, which throughout the Class Period, were materially and adversely impacting the Company's operations.

**COUNT I**

**For Violation of §10(b) of the Exchange Act and Rule 10b-5**
**Against All Defendants**

128. Plaintiff incorporates ¶¶1-127 by reference.

129. During the Class Period, Defendants disseminated or approved the false statements specified above, which they knew or recklessly disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

130. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of Siemens securities during the Class Period.

131. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Siemens' securities. Plaintiff and the Class would not have purchased Siemens' securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' false and misleading statements.

132. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their purchases of Siemens' securities during the Class Period.

## COUNT II

### For Violation of §20(a) of the Exchange Act Against the Individual Defendants

133. Plaintiff incorporates ¶¶1-132 by reference.

134. The Individual Defendants acted as controlling persons of Siemens within the meaning of §20 of the Exchange Act. By virtue of their positions and their power to control public

statements about Siemens, the Individual Defendants had the power and ability to control the actions of Siemens and its employees. By reason of such conduct, the Individual Defendants are liable pursuant to §20(a) of the Exchange Act.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

A. Declaring this action to be a proper class action pursuant to Fed. R. Civ. P. 23;

B. Awarding Plaintiff and the members of the Class damages and interest;

C. Awarding Plaintiff's reasonable costs, including attorneys' fees; and

D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: May 17, 2010

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
DAVID A. ROSENFELD
MARIO ALBA JR.

*/s/ Samuel H. Rudman*
SAMUEL H. RUDMAN

58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)

Lead Counsel for Plaintiff

WEISS & LURIE
JOSEPH H. WEISS
JAMES E. TULLMAN
551 5th Avenue, Suite 1600
New York, NY 10176

Additional Plaintiff's Counsel

CERTIFICATE OF SERVICE

I, Samuel H. Rudman, hereby certify that on May 17, 2010, I caused the foregoing Amended Complaint for Violations of the Federal Securities Laws to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

*/s/ Samuel H. Rudman*
SAMUEL H. RUDMAN